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10 Attorneys for Plaintiff
11 FACEBOOK, INC.

12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 SAN JOSE DIVISION
15

16 FACEBOOK, INC.,

17 Plaintiff,

18 v.

19 STUDIVZ LTD., HOLTZBRINCK
20 NETWORKS GmbH, HOLTZBRINCK
VENTURES GmbH AND DOES 1-25,

21 Defendants.
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Case No. 5:08-cv-03468 JF

**DECLARATION OF THOMAS J.
GRAY IN SUPPORT OF
FACEBOOK'S MOTION TO
COMPEL STUDIVZ LTD.,
HOLTZBRINCK VENTURES GMBH
AND HOLTZBRINCK NETWORKS
GMBH TO FULLY RESPOND TO
INTERROGATORIES AND TO
PRODUCE DOCUMENTS AND
THINGS PURSUANT TO CIVIL L.R.
7-1 AND 37-2**

Date: March 3, 2009

Time: 10:00 a.m.

Room: Courtroom 2, 5th Floor

Judge: Honorable Magistrate Judge
Howard R. Lloyd,

for Discovery Purposes

1 I, Thomas J. Gray, declare as follows:

2 1. I am an attorney with the law firm of Orrick, Herrington & Sutcliffe LLP, counsel
3 for Plaintiff Facebook, Inc. I make this Declaration in support of Facebook's Motion to Compel
4 StudiVZ Ltd., Holtzbrinck Ventures GmbH and Holtzbrinck Networks GmbH to Permit
5 Inspection of Documents and Things Pursuant to Civil L.R. 7-1 and 37-2. I am an active member
6 in good standing of the California State Bar. Except as set forth herein, I have personal
7 knowledge of the facts stated herein and if called as a witness, could and would competently
8 testify thereto.

9 2. During a January 6, 2009 meet and confer session, I discussed with Defendants'
10 counsel, Steven Smith, the upcoming depositions of two "personal jurisdiction" witnesses that
11 StudiVZ and the Holtzbrinck Defendants had agreed to produce, Messrs. Brehm and Weber. I
12 expressed concern that, given that the parties were at a significant impasse with respect to the
13 scope of personal jurisdiction discovery, the depositions would be an unnecessary waste of time,
14 money and resources. During the call, Mr. Smith stated that he would allow his witnesses to
15 discuss StudiVZ's accessing of Facebook for "commercial purposes." I believed we had reached
16 an agreement as to the scope of deposition testimony. The next day, I wrote Mr. Smith an email
17 to confirm our agreement. At that point, Mr. Smith stated that it was his opinion that no
18 agreement was reached during the prior day's meet and confer session. With an obvious
19 disagreement as to the issue, I do not understand why Mr. Smith boarded the plane to Germany.

20 3. I have reviewed the Declaration of Julio C. Avalos filed in support of Facebook's
21 motion to compel. Mr. Avalos's descriptions of the meet and confer sessions in which I
22 participated seem accurate based on my recollection and contemporaneous notes.

23 I declare, under penalty of perjury, that the foregoing is true and correct to the best of my
24 knowledge.

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Executed this 27th day of January, at Irvine, California.

/s/ Thomas J. Gray
Thomas J. Gray

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Dated: January 27, 2009

/s/ Thomas J. Gray

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